

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  NORTHERN NATURAL GAS COMPANY	DOCKET NO. WRU-01-41-233
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**ORDER DENYING REQUEST FOR WAIVER**

(Issued August 31, 2001)

On August 21, 2001, Northern Natural Gas Company (Northern) filed with the Utilities Board (Board) a request for an expedited waiver of the requirements of 199 IAC ch. 9 in connection with a proposed pipeline construction project on the DeWitt Branchline. Northern states the project involves the installation of 2.8 miles of 6-inch loop pipeline from milepost 0.78 to milepost 3.56 on the DeWitt Branchline. Approximately 60 percent, or about 1.7 miles, of the new pipeline will be constructed in agricultural land.

Northern proposes to commence construction on or about September 3, 2001, in order to complete construction activities by the first week of October 2001 and put the pipeline into service on or about November 1, 2001. Northern states the construction will be performed pursuant to the legal authority conferred by Northern's blanket certificate of public convenience and necessity, granted by the Federal Energy Regulatory Commission (FERC) on or about September 1, 1982, in FERC Docket No. CP82-401-000.

Northern states that it plans to construct the project in accordance with the FERC "Upland Erosion Control, Revegetation and Maintenance Plan," which Northern attached to its request as Exhibit A (the FERC Plan). Northern further states and commits that it will not commence or continue construction in wet soil conditions at times when, or locations where, construction equipment traffic might cause rutting to the extent that topsoil and subsoil would be mixed.

Northern requests a waiver of any rules in 199 IAC ch. 9 that vary from the land restoration methods proposed by Northern. Northern does not specify which, if any, of the Board's rules are considered by Northern to vary in the described manner. Northern requests the waiver pursuant to 199 IAC 9.2(2), which authorizes issuance of a waiver when the standards of 199 IAC 1.3 are satisfied and when the proposed land restoration methods would restore the land to a condition as good as or better than provided for in 199 IAC ch. 9.

The waiver standards of 199 IAC 1.3 are as follows:

1. The application of the rule would pose an undue hardship on the person for whom the waiver is requested;
2. The waiver would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to a petition for waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of the public health, safety, and welfare will be afforded by a means other than that prescribed in the rule for which the waiver is requested.

Northern submits that each of these criteria is satisfied by its request, as described in its request.

On August 23, 2001, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a resistance to Northern's request, arguing that the FERC plan is inconsistent with many of the requirements of the Board's land restoration rules, generally offers less protection to the landowner, and therefore will not restore the land "to a condition as good as or better than provided for in" chapter 9 of the Board's rules, as required for a waiver under subrule 9.2(2).

Northern has not filed any response to Consumer Advocate's resistance.

### **ANALYSIS**

The Board will deny the request for waiver, without prejudice. Northern's request fails to show that the waiver standards of rule 9.2(2) and rule 1.3 are met, as will be discussed below.

#### **1. Northern's request fails to show "undue hardship"**

Northern alleges it will suffer undue hardship if a waiver is not granted, but offers only unsupported general allegations to support its allegation. Northern says it "is obligated to its customers to upgrade its facilities in the DeWitt area by October 31, 2001" (Request at paragraph 8), but does not explain the nature of the obligation, how long Northern has been aware of the obligation, or what consequences might ensue from a failure to meet the obligation. Without some

description of the potential consequences, it is difficult for the Board to find that Northern will suffer undue hardship.

Moreover, Northern fails to connect the waiver to the threatened harm. Northern alleges the requirements of the Board's land restoration rules "will add delay and cost to interstate pipeline projects in Iowa," but Northern fails to offer a single example of a specific Board requirement that will add delay or expense. Northern claims that uncertainty regarding the Board's new rules "will undoubtedly further add to delay and cost in connection with the DeWitt Project." Assuming for the moment that any uncertainty exists, this allegation still does not prove undue hardship. It would be true of every project following adoption of new rules. If the Board accepted this allegation as sufficient to support a waiver request, then the Board's rules would never become effective, as every project would be subject to the same alleged uncertainty and therefore entitled to a waiver.

Finally, Northern alleges it would suffer undue hardship because the Board's land restoration rules "will require construction crews working for Northern to follow different procedures and may require additional or different equipment than what would be followed in similar pipeline projects in other states." (Request, paragraph 8.) Again, Northern does not offer any specifics regarding the claim of different procedures, so the Board cannot evaluate the extent of the inconvenience Northern may suffer. As a result, Northern's conclusory and unsupported allegations cannot support a finding that Northern will suffer undue hardship if the Board does not grant the requested waiver.

**2. Northern's request fails to show it will restore the affected land to a condition as good as or better than provided in the Board's rules**

Northern also asserts that the FERC Plan will restore the affected agricultural land to a condition as good as or better than provided for in 199 IAC ch. 9 and will afford substantially equal protection of the public health, safety, and welfare.

However, Consumer Advocate's resistance identifies a number of instances in which the FERC Plan does not provide the same minimum level of protection required by the Board's rules. Consumer Advocate's examples include the depth of topsoil preserved, removal of rocks, and temporary and permanent drain tile repairs. In each of these respects, the FERC Plan does not require restoration of the affected land to a condition as good as or better than provided in the Board's rules.

Northern's assertion that these criteria are satisfied is unsupported.

**3. Northern's request fails to show it will not prejudice the substantial legal rights of any person**

Northern alleges that granting the requested waiver will not prejudice the substantial legal rights of any other person, arguing that the FERC Plan "clearly imposes substantial legal duties and obligations on Northern in connection with the DeWitt Project, and thus confers corresponding substantial rights on persons affected by the project." (Request, paragraph 10.) However, Northern does not allege that the rights conferred by the FERC Plan are substantially equivalent to the rights conferred on affected persons by the Board's land restoration rules, and the discussion in the preceding section indicates that any rights conferred by the FERC Plan will offer less protection than the Board's rules. Thus, granting the requested

waiver will prejudice the legal rights of affected landowners, although the Board lacks the information necessary to determine whether the difference would be substantial.

**4. Requirements specifically mandated by statute or other provision of law**

Northern argues it is not seeking a waiver of any requirements specifically mandated by statute or other provisions of law because the Board granted similar waivers to Northern in prior proceedings. However, each of those prior orders predates the Board's new land restoration rules and offers little guidance regarding the current request.

**CONCLUSION**

The Board will deny Northern's request for a waiver of unspecified portions of 199 IAC ch. 9. Northern has failed to make any showing to support its allegations that lack of a waiver will cause it undue hardship; that granting the waiver will not prejudice the substantial legal rights of any other person; that substantially equal protection of the public health, safety, and welfare will be afforded by a means other than that prescribed in the rule; or that Northern's proposed land restoration methods will restore the land to a condition as good as, or better than, provided for in 199 IAC ch. 9.

The effect of this denial is that Northern will be required to follow the Board's land restoration rules for the DeWitt Project. Northern will not be required to file a specific land restoration plan for this project. As applied to interstate natural gas pipeline construction projects, rule 9.2 only requires a project-specific land restoration

plan for “projects requiring a certificate from the Federal Energy Regulatory Commission....” As provided in subrule 9.1(2), “[t]he rules in this chapter shall constitute the minimum land restoration standards for any pipeline construction for which a project-specific plan is not required,” including projects constructed pursuant to blanket authorization. This is consistent with the clarifications the Board made to the land restoration rules at Northern’s suggestion, as explained in the preamble to the adopted rules. IAB Vol. XXIII, No. 16, (2/7/01) p. 1239, ARC 0436B.

### **ORDERING CLAUSES**

#### **IT IS THEREFORE ORDERED:**

The “Request For Expedited Waiver” filed with the Board on August 21, 2001, by Northern Natural Gas Company is denied, without prejudice.

#### **UTILITIES BOARD**

/s/ Allan T. Thoms

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Mark O. Lambert

Dated at Des Moines, Iowa, this 31st day of August, 2001.